



AN ACT ESTABLISHING THE MERCURY-ADDED THERMOSTAT COLLECTION ACT; BANNING MERCURY-ADDED THERMOSTAT SALES AND INSTALLATION; REQUIRING COLLECTION AND RECYCLING OF MERCURY-ADDED THERMOSTATS; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, mercury that is released into the atmosphere can be transported long distances and deposited in aquatic ecosystems where it is methylated to methylmercury, the organic and most toxic form of mercury; and

WHEREAS, mercury-added thermostats represent the largest amount of mercury in ordinary household products; and

WHEREAS, a single mercury-added thermostat contains 3 to 5 grams of mercury; and

WHEREAS, according to the U.S. Environmental Protection Agency's 2002 estimates, each year about 6 to 8 tons of mercury from discarded thermostats end up in solid waste facilities and between 1 and 2 tons are released into the air; and

WHEREAS, according to a 2004 study by the U.S. Environmental Protection Agency, more than 10% of the estimated mercury reservoir still currently in use in the United States resides in mercury-added thermostats; and

WHEREAS, methylmercury bioaccumulates and biomagnifies in animals, including fish and humans; and

WHEREAS, according to the Montana Department of Public Health and Human Services, mercury has been found in fish in at least 28 water bodies in Montana, including Canyon Ferry Reservoir, Cooney Reservoir, Flathead Lake, Fort Peck Reservoir, Hebgen Lake, Lake Koocanusa, Seeley Lake, Swan Lake, Tongue River Reservoir, and Whitefish Lake; and

WHEREAS, methylmercury is a known neurotoxin to which the human fetus is very sensitive; and

WHEREAS, the federal Centers for Disease Control and Prevention estimate that between 300,000 and 630,000 infants are born in the United States each year with mercury levels that are associated, at later ages, with the loss of IQ; and

WHEREAS, new evidence indicates that methylmercury exposure may increase the risk of cardiovascular disease in humans, especially adult men; and

WHEREAS, decreases in local and regional sources of mercury emissions have been shown to lead to decreases in mercury levels in fish and wildlife; and

WHEREAS, in 1998, thermostat makers General Electric, Honeywell, and White-Rodgers established the Thermostat Recycling Corporation to implement a program for collecting used mercury-added thermostats under which thermostat wholesalers and contractors, as well as household hazardous waste facilities, volunteer to collect thermostats from heating, ventilating, and air-conditioning contractors and the general public.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1. Short title.** [Sections 1 through 9] may be cited as the "Mercury-Added Thermostat Collection Act".

**Section 2. Purpose.** The purpose of [sections 1 through 9] is to facilitate the proper disposal of mercury-added thermostats.

**Section 3. Definitions.** As used in [sections 1 through 9], unless the context requires otherwise, the following definitions apply:

- (1) "Department" means the department of environmental quality provided for in 2-15-3501.
- (2) "Manufacturer" means a business concern that owns or owned the name brand of a mercury-added thermostat sold in this state.
- (3) (a) "Mercury-added thermostat" means a product or device that uses a mercury switch to sense and control room temperature through communication with heating, ventilating, or air-conditioning equipment in residential, commercial, industrial, or other buildings.  
(b) The term does not include a thermostat used to sense and control temperature as part of a manufacturing process.
- (4) "Out-of-service mercury-added thermostat" means a mercury-added thermostat that is removed from a building or facility and is intended to be discarded.

(5) "Program" means a system for the collection, transportation, recycling, and disposal of out-of-service mercury-added thermostats that is financed, as well as managed or provided, by a manufacturer or collectively with other manufacturers.

(6) "Qualified contractor" means a person engaged in the business of installation, service, or removal of heating, ventilation, and air-conditioning components who employs seven or more service technicians or installers or who is located in areas outside of urban areas as defined by the United States bureau of the census.

(7) "Retailer" means a person who sells thermostats of any kind directly to a consumer through a selling or distribution mechanism, including but not limited to a sale using catalogs or the internet.

(8) (a) "Thermostat" means a product or device that uses a switch to sense and control room temperature through communication with heating, ventilating, or air-conditioning equipment in residential, commercial, industrial, and other buildings.

(b) The term does not include a product or device used to sense and control temperature as part of a manufacturing process.

(9) (a) "Wholesaler" means a person engaged in the distribution and wholesale selling of heating, ventilation, and air-conditioning components to contractors who install heating, ventilation, and air-conditioning components and whose total wholesale sales account for 80% or more of total sales. The term may include a retailer.

(b) The term does not include a manufacturer.

**Section 4. Prohibition on sale and installation of mercury-added thermostats -- list.** (1) After January 1, 2010, a person may not sell, offer for sale, or install a mercury-added thermostat in Montana.

(2) The department shall maintain a list on its website of manufacturers that are in compliance with [sections 1 through 9].

**Section 5. Manufacturer collection and recycling program -- requirements.** (1) By January 1, 2010, a manufacturer shall establish and maintain a program for out-of-service mercury-added thermostats in compliance with [sections 1 through 9]. A manufacturer may establish a program individually or collectively with other manufacturers. A manufacturer or a group of manufacturers operating a program collectively may contract with a retailer for collection of out-of-service mercury-added thermostats.

(2) A program for out-of-service mercury-added thermostats must meet the following requirements:

(a) Out-of-service mercury-added thermostats collected by the program must be collected, handled, and recycled in compliance with [sections 1 through 9] and rules adopted pursuant to [section 9].

(b) The program must provide collection bins for out-of-service mercury-added thermostat collection to wholesalers and qualified contractors at a nominal one-time administrative fee not to exceed \$40 to offset the cost of each collection bin for each collection location.

(c) The program must make available authorized recycling bins for out-of-service mercury-added thermostats at a nominal one-time administrative fee not to exceed \$40 to offset the cost of each collection bin for each collection location to any local governmental entity that requests a bin for use at a household hazardous waste collection facility or event.

(d) The program must either arrange for pickup of the collection bins provided pursuant to this section or pay for the costs of shipping the collection bins for proper handling and recycling in accordance with the program.

(e) The program must develop educational and other outreach materials for contractors and homeowners and make those materials available at program collection locations. These materials may include, but are not limited to:

(i) signage that is prominently displayed and easily visible to consumers and contractors;

(ii) written materials and templates of materials for reproduction by retailers and wholesalers to be provided to the consumer at the time of purchase, delivery, or both purchase and delivery of a thermostat. The materials must include the proper management of out-of-service mercury-added thermostats and the locations of collection bins.

(iii) advertising or other promotional materials, or both, that include references to the collection locations; and

(iv) materials to be used in direct communications with the consumer and contractor at the time of purchase.

(f) The program must provide nonfinancial incentives and education to contractors, service technicians, and homeowners to encourage the return of out-of-service mercury-added thermostats to established collection locations.

(g) The program must encourage the purchase of thermostats that are programmable and increase

energy efficiency as replacements for mercury-added thermostats.

(3) The department may order a manufacturer or a group of manufacturers operating a program to revise the program to comply with this section.

**Section 6. Initial education and outreach -- requirements.** From [the effective date of this act] through December 31, 2012, a manufacturer shall conduct initial education and outreach efforts, including but not limited to:

(1) the establishment of a public internet website. Templates of educational materials must be posted on the website in a format that can be easily downloaded. A link to the website must be provided to the department.

(2) methods used to engage other stakeholders, such as waste, demolition, heating, ventilation, and air-conditioning organizations, as well as appropriate state agencies and local governments, in securing support and participation in programs that encourage the proper management of out-of-service mercury-added thermostats;

(3) strategies to work with utilities participating in programs involving the replacement of thermostats to encourage their participation in the collection and proper management of out-of-service mercury-added thermostats. These strategies may include the inclusion of an educational insert in utility bills.

(4) contacting wholesalers and encouraging participation in educating customers on the proper management of out-of-service mercury-added thermostats; and

(5) strategies used to encourage support and participation by retailers and other outlets in educating consumers on the proper management of out-of-service mercury-added thermostats.

**Section 7. Annual report -- publication.** (1) By April 1, 2011, and by April 1 of each succeeding year, a manufacturer shall submit an annual report to the department covering the previous calendar year. The annual reports must provide the department with the following:

- (a) the number of out-of-service mercury-added thermostats collected by the program;
- (b) the estimated total amount of mercury contained in the thermostat components collected by the program;
- (c) an evaluation of the effectiveness of the program;

(d) collection goals that must ensure an increase in the number of mercury-added thermostats collected each year until 2016 or a time that the department determines that the number of in-service thermostats is steadily declining;

(e) an accounting of the program administrative costs, including a copy of Internal Revenue Service Form 990 for a nonprofit organization's program. For a for-profit organization's program, the manufacturer or group of manufacturers operating a program shall submit independently audited financial statements detailing revenue and a full accounting of administrative costs incurred.

(f) a description of outreach strategies used to increase participation and collection rates;

(g) examples of outreach and educational materials used by the program;

(h) names and locations of collection locations;

(i) the number of out-of-service mercury-added thermostats collected at each collection location;

(j) a description of how the collected out-of-service mercury-added thermostats were managed; and

(k) any proposed modifications the manufacturer may make to the program.

(2) The department shall use the report to determine whether collection goals are being met. If collection goals are not met, the department shall require modifications to manufacturers' collection plans in an attempt to improve collection rates.

(3) The manufacturer or group of manufacturers operating a program shall post the report to a public website.

(4) The department shall post reports submitted pursuant to this section on the department website or may provide a link to the public website.

(5) Based on diminished return of thermostats, the department may discontinue the requirement for the annual report pursuant to this section on finding that mercury-added thermostats no longer pose a threat to the environment and public health in Montana.

**Section 8. Wholesaler collection sites.** (1) A wholesaler with a physical location in Montana shall act as a collection location for out-of-service mercury-added thermostats.

(2) A wholesaler that distributes thermostats by mail to buyers in the state shall include with the sale of the thermostat a website address and a toll-free telephone number with instructions on obtaining a prepaid mail-in label that a consumer may use to send an out-of-service mercury-added thermostat to a collection location.

(3) A wholesaler shall distribute to its customers the educational and outreach materials developed by a manufacturer pursuant to [section 5].

**Section 9. Rulemaking authority.** The department shall adopt rules to implement the provisions of [sections 1 through 9].

**Section 10. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

**Section 11. Codification instruction.** [Sections 1 through 9] are intended to be codified as an integral part of Title 75, part 10, and the provisions of Title 75, part 10, apply to [sections 1 through 9].

**Section 12. Effective date.** [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,  
SB 0424, originated in the Senate.

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Secretary of the Senate

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2009.

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2009.



SENATE BILL NO. 424

INTRODUCED BY BARKUS, ANKNEY, HANDS, WANZENRIED, ZINKE

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